

PLANNED DEVELOPMENT PERMIT AMENDMENT

FILE NO.	PDA04-066-01
LOCATION OF PROPERTY	South side of West Julian between Market Street and North First Street (55 Devine Street)
ZONING DISTRICT	A(PD) Planned Development Zoning District (File No. PDC04-066)
GENERAL PLAN DESIGNATION	Downtown
PROPOSED USE	Planned Development Permit Amendment to allow the installation of a new automatic gate on an approximately 0.39-gross acre portion of an approximately 1.7-gross acre mixed-use site.
ENVIRONMENTAL STATUS	Exempt pursuant to CEQA Guidelines Section 15301 for Existing Facilities
APPLICANT ADDRESS	Ms. Susan Hoffman 42612 Christy St. Fremont, CA 94538
OWNER ADDRESS	San Jose Mission Villas LLC 44 West Julian Street San Jose, California, 95110

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts and findings regarding this proposed project:

1. **Site Description and Surrounding Uses.** The subject site is located on South side of West Julian between Market Street and North First Street (55 Devine Street). The project is surrounded commercial to the east, Santa Clara County courthouse buildings to the south, and multi-family residential uses to the north.
2. **Project Description.** Planned Development Permit Amendment to allow the demolition of a gate and the installation of a new automatic gate on an approximately 0.39-gross acre lot that is located within an approximately 1.7-gross acre mixed-use site.
3. **General Plan Conformance.** The subject site has an Envision San José 2040 General Plan Land Use / Transportation Diagram designation of Downtown. This designation includes office, retail, service, residential, and entertainment uses in the Downtown. Redevelopment should be at very high intensities, unless incompatibility with other major policies within the Envision General Plan (such as Historic Preservation Policies) indicates otherwise. Where single-family detached homes are adjacent to the

perimeter of the area designated as Downtown, new development should serve as a transition to the lower-intensity use while still achieving urban densities appropriate for the perimeter of downtown in a major metropolitan city. All development within this designation should enhance the “complete community” in downtown, support pedestrian and bicycle circulation, and increase transit ridership.

Residential projects within the Downtown designation should generally incorporate ground floor commercial uses. This designation does not have a minimum residential density range (DU/AC) in order to facilitate mixed-use projects that may include small amounts of residential in combination with significant amounts of non-residential use. Such mixed-use projects should be developed within the identified FAR range of up to 30.0. While this land use designation allows up to 800 dwelling units to the acre, achievable densities may be much lower in a few identified areas to ensure consistency with the Santa Clara County Comprehensive Land Use Plan (CLUP) adopted by the Santa Clara County Airport Land Use Commission (ALUC) for the Norman Y. Mineta San José International Airport. The broad range of uses allowed in Downtown could also facilitate medical office uses or full-service hospitals. The Downtown Urban Design Policies speak to the urban, pedestrian-oriented nature of this area. As such, uses that serve the automobile should be carefully controlled in accordance with the Downtown Land Use Policies.

Analysis: The existing building was approved under File No. PD04-066, and contains a mix of commercial and residential uses. There are no changes of use proposed, and the gates would not constitute an expansion of use. Therefore, the project is consistent with the General Plan Designation.

The following General Plan goals address community design, and the project is consistent.

- a. Community Design Goal CD2.1 Design the street network for its safe shared use by pedestrians, bicyclists, and vehicles. Include elements that increase driver awareness.

Analysis: The gate is setback approximately 25-feet and is designed to allow for vehicle stacking. Additionally, there will be a concrete island installed in the center of the garage opening, which will help increase driver awareness. So the project is consistent with the goal above.

- a. Community Design Goal CD-5.5 Include design elements during the development review process that address security, aesthetics, and safety. Safety issues include, but are not limited to, minimum clearances around buildings, fire protection measures such as peak load water requirements, construction techniques, and minimum standards for vehicular and pedestrian facilities and other standards set forth in local, state, and federal regulations.

Pursuant to the San Jose Police Department memo dated 9/8/20 from San Jose Police Department the reported crime statistics as defined by B&P Section 23958.4(c) are over the 20% crime index. A crime analysis indicated a total of 381 reported incidents including calls for service and self-initiated events occurred within a 1,000-foot radius of 55 Devine Street in a 12 months period (September 1, 2019 – September 8, 2020). There has been a recent upward trend of vehicle burglary, burglary, suspicious person and trespassing events in the area. The San Jose Police Department believe that a security gate helps prevent these types of crime and alleviate the burden upon the patrol officers, creating a positive impact on public safety. The San Jose Police Department is neutral of Park Townsend application for a Planned Development Permit Amendment to install a security gate. The gates are intended to help promote the safety of the residents and their property. Therefore, the project is consistent with the goal above.

4. **Zoning Conformance.** The project site has a zoning designation of A(PD) Planned Development Zoning District. The project is consistent with the regulations of the Planned Development Zoning (File No. PDC03-097) in the following manner.

- a. **Use.** The existing mixed use, is a use an allowed use pursuant to approved File No. PDC03-097.
- b. **Setbacks and Height.** Approved File No. PDC03-097 development standards are detailed in the table below.

Setbacks and Height:

	Required-
Market Street Frontage	4 feet minimum
North First Street Frontage	0.0 feet minimum
Devine Street Frontage	0.5 feet minimum
Julian Street Frontage	2.0 feet minimum
Height	65 feet maximum

Analysis: The project conforms to the setback and height requirements as the project is not proposing modifications to the height, building square footage, or building footprint.

c. **Parking.** Minimum residential parking requirements:

guest parking 10 standards parking spaces outside the gate.

Live work or dual master Unit 2 tandem spaces

All other units 1 standard space

Minimum commercial parking requirements:

1 parking space per 360 square feet. 3 standards spaces.

Analysis: There are no change to the number of parking spaces or dimensions proposed. While there are 11 spaces outside the existing security gate and the project is consistent, the operations of the new gate includes telephone entry access allowing accessibility for guests of the residential units.

5. **Design Guidelines Conformance.** The project is subject to and consistent with the [Residential and Downtown Design Guidelines](#). The gate is to be located off of Devine Street at the back of the project. The gate is setback approximately 25-feet from the streetwall, for aesthetics and to allow for stacking. Additionally, there are 11 parking spaces outside of the existing gates. Access to parking could be gained by a card reader and telephone entry system.
6. **Planned Development Permit Amendment Findings.** Chapter 20.100 of Title 20 of the San Jose Municipal Code establishes required findings for issuance of a Planned Development Permit Amendment.
- a. Amendments may be granted at the discretion of the director, planning commission on appeal, or city council as appropriate upon a finding that the amendment does not negate any findings required by Section 20.100.940.
- Analysis: There are no changes to the height setbacks use or footprint or parking. Parking is to remain the same. Pursuant to approved File No. PDC03-097, there are 11 parking spaces outside of the existing security gate and the project is consistent with the finding above.*
- b. Nothing in this section shall preclude the director, planning commission or city council from making reasonable modifications, additions or deletions to any condition in order to protect the public peace, health, safety, morals or welfare.
- Analysis: Pursuant to the Police memo dated 9/8/20 from San Jose Police Department the reported crime statistics as defined by B&P Section 23958.4(c) are over the 20% crime index. A crime analysis indicated a total of 381 reported incidents including calls for service and self-initiated events occurred within a*

1,000-foot radius of 55 Devine Street in a 12 months period (September 1, 2019 – September 8, 2020). There has been a recent upward trend of vehicle burglary, burglary, suspicious person and trespassing events in the area. The San Jose Police Department believe that a security gate helps prevent these types of crime and alleviate the burden upon the patrol officers, creating a positive impact on public safety. The San Jose Police Department is neutral of Park Townsend application for a Planned Development Permit Amendment to install a security gate, and the finding can be made to protect the public peace, health, safety, morals or welfare.

Planned Development Permit Findings

- a. The Planned Development Permit, as issued, is consistent with and furthers the policies of the General Plan; and

Analysis: The site is located within the Downtown General Plan land use designation and the existing development is not proposing a change of land use or intensity and therefore is consistent with the General Plan policies.

- b. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property; and

Analysis: As described in the Zoning Ordinance compliance section above, the project conforms to the setback and height requirements as the project is not proposing modifications to the height, building square footage, or building footprint and the project conforms to the A(PD) Planned Development Zoning District and all other provisions of the San Jose Municipal Code.

- c. The Planned Development Permit, as approved, is consistent with applicable City Council Policies, or counterbalancing considerations justify the inconsistency; and

Analysis: The project is consistent with the Public Noticing and Public Outreach City Council Policies. Furthermore, the project has the on-site signs posted on the project site. The project has been noticed for public hearing to a radius of 500 feet, consistent with the Public Outreach City Council Policy.

- d. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious; and

Analysis: The project is for an iron gate on the backside of an existing building at the parking lot entry. The gate is setback approximately 25-feet from the property line and allows for stacking as well as visual appeal. Therefore, the gate is not modifying the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious.

- e. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

Analysis: The project will not have an unacceptable negative effect on adjacent property or properties or noise, vibration, dust, drainage, erosion, storm water runoff, and odor as the project is for a gate that is setback approximately 25-feet from the property line. The setback allows for stacking as well as improved visual appeal.

In accordance with the findings set forth above, a Planned Development Permit Amendment for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with

the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit.** Obtainment of a Building Permit is evidence of acceptance of all conditions specified in this document and the permittee's intent to fully comply with said conditions.
4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the permittee for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
5. **Conformance to Plans.** The development of the site shall conform to the approved Site Development Permit plans entitled, "Park Townsend 55 Devine Street San Jose CA" dated received October 25, 2020, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
6. **Compliance with Laws.** The subject use shall be conducted in full compliance with all local, state and federal laws and regulations. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code or any other law.
7. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
8. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
9. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings and wall surfaces within 48-hours of defacement, including job sites for projects under construction.
10. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.

11. **Stormwater Stenciling.** All storm drain inlets and catch basins shall be stenciled with the “NO DUMPING - FLOWS TO BAY,” applied to the top and/or face of the curb next to the storm drain inlet. The development maintenance entity and/or property owner shall ensure that all storm drain inlet markings located on privately-maintained streets within the property are present and maintained.
12. **Affordable Housing Financing Plans.** The San José City Council (“City”) approved the Envision San Jose General Plan 2040 (“General Plan”) in 2011. The General Plan provides the framework for development located in San Jose. The City is in the process of developing financing plans to help fund affordable housing and related amenities and services. The financing plans may include the creation of a (i) Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based Improvement District(s); (iv) Mitigation Impact Fee program(s); (v) Commercial linkage fee program(s); and/or (vi) other financing mechanisms or combination thereof. For example, the City Council has directed City staff to complete studies and make recommendations related to commercial impact fees to help fund affordable housing. These efforts are on-going and there will continue to be other similar efforts to study various funding mechanisms for affordable housing.

By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee further agrees that prior to the issuance of any building permit, the project shall be subject to, fully participate in, and pay any and all charges, fees, assessments, or taxes included in any City Council approved financing plans related to affordable housing, as may be amended, which may include one or more of the financing mechanisms identified above.

13. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
14. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- Construction Plans.* This permit file number, HPDA04-066-01 must be printed on all construction plans submitted to the Building Division.
 - Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - Emergency Address Card.* The Project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
15. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following:

<http://www.sanjoseca.gov/devresources>.

- Transportation:
 - The telephone entry / access control system shall be located a minimum of 25 feet from back of sidewalk to provide minimum vehicular stacking length.

- ii. This project would not require a detailed CEQA transportation analysis because the project is expected to result in less-than-significant VMT impacts. Furthermore, no additional transportation analysis is required.
 - b. **Grading/Geology:** A grading permit may be required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - c. **Flood: Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
 - d. **Street Improvements:** Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - e. **Greater Downtown Area Master Plans:** This project is located within the Greater Downtown area. Public improvements shall conform to the Council approved San Jose Downtown Streetscape and Street and Pedestrian Lighting Master Plans.
 - f. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
16. **Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **18th day of November, 2020.**

Rosalynn Hughey, Director
Planning, Building, and Code Enforcement

Deputy